

HOUSE BILL 21

M3

2lr0412

(PRE-FILED)

By: **Delegate McConkey**

Requested: August 1, 2011

Introduced and read first time: January 11, 2012

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 2012

CHAPTER _____

1 AN ACT concerning

2 ~~Environment – Reduction of Lead Risk in Housing – Repeal of Obsolete~~
3 ~~Language~~

4 Certificate of a Qualified Expert – Lead Paint Poisoning Claims

5 FOR the purpose of ~~removing obsolete language in provisions relating to reduction of~~
6 ~~lead risk in rental housing; making conforming changes; and generally relating~~
7 ~~to the repeal of obsolete language in provisions relating to reduction of lead risk~~
8 ~~in rental housing~~ requiring the court to dismiss a certain claim filed in a circuit
9 court or a United States District Court against a person for injury caused by the
10 ingestion of lead-based paint or lead-contaminated dust if the person does not
11 file a certificate of a qualified expert for each defendant; specifying the contents
12 of the certificate; requiring the certificate to be filed within a certain period of
13 time and be served on certain persons, subject to certain exceptions; requiring a
14 person who files a certificate of a qualified expert to provide a defendant with a
15 certain list of qualifications; requiring a defendant to produce certain evidence
16 under certain circumstances; altering a certain time period for filing a
17 certificate of a qualified expert under certain circumstances; providing that the
18 failure to provide certain evidence constitutes a certain waiver; authorizing the
19 court to waive or modify the requirement to file a certificate of a qualified expert
20 under certain circumstances; requiring a defendant of a certain claim to file a
21 written response to a certificate of a qualified expert; specifying the contents of
22 the written response; requiring the written response to be filed within a certain
23 period of time and be served on certain persons; providing that a failure to file a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 written response constitutes a certain admission; requiring the court to
 2 schedule and hold a hearing regarding the certificate of a qualified expert and
 3 the written response to a certificate of a qualified expert; authorizing the court
 4 to recall a former judge for temporary assignment for certain purposes;
 5 requiring the court to allow the claimant and defendant an opportunity to be
 6 heard; authorizing the court to enter summary judgment in favor of or against
 7 the claimant or defendant under certain circumstances; defining certain terms;
 8 providing for the application of this Act; and generally relating to lead paint
 9 poisoning claims.

10 ~~BY repealing and reenacting, with amendments,~~

11 ~~Article – Environment~~

12 ~~Section 6-811(a)(1), 6-812, 6-819, 6-820, 6-823, 6-843(a), (b), and (c), and~~
 13 ~~6-846(a)~~

14 ~~Annotated Code of Maryland~~

15 ~~(2007 Replacement Volume and 2011 Supplement)~~

16 BY adding to

17 Article – Courts and Judicial Proceedings

18 Section 3-2D-01 through 3-2D-04 to be under the new subtitle “Subtitle 2D.

19 Lead Paint Poisoning Claims”

20 Annotated Code of Maryland

21 (2006 Replacement Volume and 2011 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 23 MARYLAND, That the Laws of Maryland read as follows:

24 ~~**Article – Environment**~~

25 ~~6-811.~~

26 ~~(a) (1) [On or before December 31, 1995, the] THE owner of an affected~~
 27 ~~property shall register the affected property with the Department WITHIN 30 DAYS~~
 28 ~~AFTER ACQUIRING THE PROPERTY.~~

29 ~~6-812.~~

30 ~~[(a)] An owner who has registered an affected property under § 6-811 of this~~
 31 ~~subtitle shall:~~

32 ~~(1) Renew the registration of the affected property on or before~~
 33 ~~December 31 of each year or according to a schedule established by the Department by~~
 34 ~~regulation; and~~

35 ~~(2) Update the information contained in the owner’s registration~~
 36 ~~required by § 6-811(b)(1) through (5) of this subtitle within 30 days after any change~~
 37 ~~in the information required in the registration.~~

1 ~~[(b) An owner who first acquires affected property after December 1, 1995~~
2 ~~shall register the affected property under § 6-811 of this subtitle within 30 days after~~
3 ~~the acquisition.]~~

4 ~~6-810.~~

5 ~~(a) The modified risk reduction standard shall consist of performing the~~
6 ~~following:~~

7 ~~(1) Passing the test for lead-contaminated dust under § 6-816 of this~~
8 ~~subtitle; and~~

9 ~~(2) Performing the following lead-hazard reduction treatments:~~

10 ~~(i) A visual review of all exterior and interior painted surfaces;~~

11 ~~(ii) The removal and repainting of chipping, peeling, or flaking~~
12 ~~paint on exterior and interior painted surfaces;~~

13 ~~(iii) The repair of any structural defect that is causing the paint~~
14 ~~to chip, peel, or flake, that the owner of the affected property has knowledge of or, with~~
15 ~~the exercise of reasonable care, should have knowledge of;~~

16 ~~(iv) Repainting, replacing, or encapsulating all interior~~
17 ~~lead-based paint or untested painted windowsills with vinyl, metal, or any other~~
18 ~~material in a manner and under conditions approved by the Department;~~

19 ~~(v) Ensuring that caps of vinyl, aluminum, or any other~~
20 ~~material in a manner and under conditions approved by the Department, are installed~~
21 ~~in all window wells where lead-based paint or untested paint exists in order to make~~
22 ~~the window wells smooth and cleanable;~~

23 ~~(vi) Except for a treated or replacement window that is free of~~
24 ~~lead-based paint on its friction surfaces, fixing the top sash, subject to federal, State,~~
25 ~~or local fire code standards, of all windows in place in order to eliminate the friction~~
26 ~~caused by the movement of the top sash;~~

27 ~~(vii) Rehanging all doors in order to prevent the rubbing together~~
28 ~~of a lead-painted surface with another surface;~~

29 ~~(viii) Ensure that all kitchen and bathroom floors are overlaid~~
30 ~~with a smooth, water-resistant covering; and~~

31 ~~(ix) HEPA vacuuming and washing with high-phosphate~~
32 ~~detergent or its equivalent, as determined by the Department, any area of the affected~~
33 ~~property where repairs were made.~~

1 ~~(b) (1) A tenant of an affected property may notify the owner of the~~
 2 ~~affected property of a defect in the affected property under this section in accordance~~
 3 ~~with this subsection.~~

4 ~~(2) Notice of a defect under this section shall consist of:~~

5 ~~(i) If the modified risk reduction standard has not been~~
 6 ~~satisfied for the affected property, the presence of chipping, peeling, or flaking paint on~~
 7 ~~the interior or exterior surfaces of the affected property or of a structural defect~~
 8 ~~causing chipping, peeling, or flaking paint in the affected property; or~~

9 ~~(ii) If the modified risk reduction standard has been satisfied for~~
 10 ~~the affected property, a defect relating to the modified risk reduction standard.~~

11 ~~(c) (1) [After February 23, 1996, an] AN owner of an affected property~~
 12 ~~shall satisfy the modified risk reduction standard.~~

13 ~~(i) Within 30 days after receipt of written notice that a person~~
 14 ~~at risk who resides in the property has an elevated blood lead level documented by a~~
 15 ~~test for EBL greater than or equal to 15 ug/dl before February 24, 2006 or greater than~~
 16 ~~or equal to 10 ug/dl on or after February 24, 2006; or~~

17 ~~(ii) Within 30 days after receipt of written notice from the~~
 18 ~~tenant, or from any other source, [of:~~

19 ~~1. A] OF A defect[; and~~

20 ~~2. The existence of a person at risk in the affected~~
 21 ~~property].~~

22 ~~(2) (i) An owner who receives multiple notices of an elevated blood~~
 23 ~~level [under this subsection] or multiple notices of defect under [subsection (d) of] this~~
 24 ~~[section] SUBSECTION may satisfy all such notices by subsequent compliance with the~~
 25 ~~risk reduction measures specified in subsection (a) of this section, as documented by~~
 26 ~~satisfaction of subsection (E) OR (f) [or (g)] of this section, if the owner complies with~~
 27 ~~the risk reduction measures specified in subsection (a) of this section after the date of~~
 28 ~~the test documenting the elevated blood level or after the date the notices of defect~~
 29 ~~were issued.~~

30 ~~(ii) Subparagraph (i) of this paragraph does not affect an~~
 31 ~~owner's obligation to perform the risk reduction measures specified in subsection (a) of~~
 32 ~~this section for a triggering event that occurs after the owner satisfies the provisions of~~
 33 ~~subparagraph (i) of this paragraph.~~

1 ~~(d) [After May 23, 1997, an owner of an affected property shall satisfy the~~
2 ~~modified risk reduction standard within 30 days after receipt of written notice from~~
3 ~~the tenant, or from any other source, of a defect.~~

4 ~~(e) An owner of an affected property is in compliance with subsection (e) [or~~
5 ~~(d)] of this section if, as applicable:~~

6 ~~(1) The owner satisfies the modified risk reduction within 30 days~~
7 ~~after receiving a notice of elevated blood lead level or a notice of defect in accordance~~
8 ~~with this section; or~~

9 ~~(2) The owner provides for the temporary relocation of tenants to a~~
10 ~~lead-free dwelling unit or another dwelling unit that has satisfied the risk reduction~~
11 ~~standard in accordance with § 6-815 of this subtitle within 30 days after the receipt of~~
12 ~~a notice of elevated blood lead level or a notice of defect.~~

13 ~~[(f)] (E) Except as provided in § 6-817(b) of this subtitle, on and after~~
14 ~~February 24, 2006, an owner of affected properties shall ensure that 100% of the~~
15 ~~owner's affected properties in which a person at risk does not reside have satisfied the~~
16 ~~modified risk reduction standard.~~

17 ~~[(g)] (F) An owner of an affected property shall verify satisfaction of the~~
18 ~~modified risk reduction standard by submitting a report from an accredited inspector~~
19 ~~to the Department.~~

20 ~~[(h)] (G) Notice given under this section shall be written, and shall be sent~~
21 ~~by:~~

22 ~~(1) Certified mail, return receipt requested; or~~

23 ~~(2) A verifiable method approved by the Department.~~

24 ~~[(i)] (H) The Department may, by regulation, eliminate any treatment from~~
25 ~~the modified risk reduction standard if the Department finds that performing the~~
26 ~~treatment in an occupied property is harmful to public health.~~

27 ~~[(j)] (I) (1) Exterior work required to satisfy the modified risk reduction~~
28 ~~standard may be delayed, pursuant to a waiver approved by the appropriate person~~
29 ~~under paragraph (2) of this subsection, during any time period in which exterior work~~
30 ~~is not required to be performed under an applicable local housing code or, if no such~~
31 ~~time period is specified, during the period from November 1 through April 1, inclusive.~~

32 ~~(2) A waiver under paragraph (1) of this subsection may be approved~~
33 ~~by the code official for enforcement of the housing code or minimum livability code of~~
34 ~~the local jurisdiction, or, if there is no such official, the Department of Housing and~~
35 ~~Community Development.~~

1 ~~(3) Notwithstanding the terms of the waiver, all work delayed in~~
 2 ~~accordance with paragraph (1) of this subsection shall be completed within 30 days~~
 3 ~~after the end of the applicable time period.~~

4 ~~(4) Any delay allowed under paragraph (1) of this subsection may not~~
 5 ~~affect the obligation of the owner to complete all other components of the risk~~
 6 ~~reduction standard and to have those components inspected and verified.~~

7 ~~[(k)](J) The report of the inspector verifying compliance with this subtitle~~
 8 ~~shall create a rebuttable presumption, that may be overcome by clear and convincing~~
 9 ~~evidence, that the owner is in compliance with the modified risk reduction standard~~
 10 ~~for the affected property unless there is:~~

11 ~~(1) Proof of actual fraud as to that affected property; or~~

12 ~~(2) Proof that the work performed on the affected property was not~~
 13 ~~performed by or under the supervision of personnel accredited under § 6-1002 of this~~
 14 ~~title.~~

15 ~~6-820.~~

16 ~~(a) [Except as provided in subsection (b) of this section, an owner of an~~
 17 ~~affected property shall give to the tenant of the affected property a notice, prepared by~~
 18 ~~the Department, of the tenant's rights under §§ 6-817 and 6-819 of this subtitle,~~
 19 ~~according to the following schedule:~~

20 ~~(1) At least 25% of the owner's affected properties by May 25, 1996;~~

21 ~~(2) At least 50% of the owner's affected properties by August 25, 1996;~~

22 ~~(3) At least 75% of the owner's affected properties by November 25,~~
 23 ~~1996; and~~

24 ~~(4) 100% of the owner's affected properties by February 25, 1997.~~

25 ~~(b) On or after February 24, 1996, an] AN owner of an affected property shall~~
 26 ~~give to the tenant of the affected property a notice, prepared by the Department, of the~~
 27 ~~tenant's rights under §§ 6-817 and 6-819 of this subtitle upon the execution of a lease~~
 28 ~~or the inception of a tenancy.~~

29 ~~[(e)](B) An owner of an affected property shall give to the tenant of the~~
 30 ~~affected property a notice, prepared by the Department, of the tenant's rights under §§~~
 31 ~~6-817 and 6-819 of this subtitle at least every 2 years after last giving the notice to~~
 32 ~~the tenant.~~

1 ~~[(d)] (C)~~ The owner shall include, with the notice of the tenant's rights that
2 is provided to a tenant under this section upon the execution of a lease or the inception
3 of a tenancy, a copy of the current verified inspection certificate for the affected
4 property prepared under ~~§ 6-818~~ of this subtitle.

5 ~~[(e)] (D)~~ (1) Notice given under this section shall be written, and shall be
6 sent by:

7 ~~(i)~~ Certified mail, return receipt requested; or

8 ~~(ii)~~ A verifiable method approved by the Department.

9 ~~(2)~~ When giving notice to a tenant under this section, the owner shall
10 provide documentation of the notice to the Department in a manner acceptable to the
11 Department.

12 ~~(3)~~ A notice required to be given to a tenant under this section shall be
13 sent to a party or parties identified as the lessee in a written lease in effect for an
14 affected property or, if there is no written lease, the party or parties to whom the
15 property was rented.

16 ~~[(f)] (E)~~ A person who has acquired, or will acquire, an affected property
17 shall give the notice required under this section to the tenant of the affected property:

18 (1) Before transfer of legal title; or

19 (2) Within 15 days following transfer of legal title.

20 ~~6-823.~~

21 ~~(a)~~ ~~[By May 23, 1996, an] AN~~ owner of an affected property shall:

22 (1) ~~[give] GIVE~~ to the tenant of each of the owner's affected properties
23 a lead poisoning information packet prepared or designated by the Department~~];~~
24 ~~AND~~

25 ~~[(b)] (2)~~ ~~[On or after February 24, 1996, upon] ON~~ the execution of a lease
26 or the inception of a tenancy for an affected property ~~[the owner of the affected~~
27 ~~property shall],~~ give to the tenant a lead poisoning information packet prepared or
28 designated by the Department.

29 ~~[(e)] (B)~~ An owner of an affected property shall give to the tenant of the
30 affected property another copy of the lead poisoning information packet prepared or
31 designated by the Department at least every 2 years after last giving the information
32 packet to the tenant.

1 ~~[(d)] (C)~~ ~~A packet given to a tenant under this section shall be sent by:~~

2 ~~(1) Certified mail, return receipt requested; or~~

3 ~~(2) A verifiable method approved by the Department.~~

4 ~~[(e)] (D)~~ ~~The packet required to be given to a tenant under this section shall~~
 5 ~~be sent to a party or parties identified as the lessee in a written lease in effect for an~~
 6 ~~affected property or, if there is no written lease, the party or parties to whom the~~
 7 ~~property was rented.~~

8 ~~[(f)] (E)~~ ~~A person who has acquired, or will acquire, an affected property~~
 9 ~~shall give the packet required under this section to the tenant of the affected property:~~

10 ~~(1) Before transfer of legal title; or~~

11 ~~(2) Within 15 days following transfer of legal title.~~

12 ~~6-843.~~

13 ~~(a) (1) Except as provided in this subsection and subsection (b) of this~~
 14 ~~section, and in cooperation with the Department of Housing and Community~~
 15 ~~Development, the State Department of Assessments and Taxation, and other~~
 16 ~~appropriate governmental units, the Department shall provide for the collection of an~~
 17 ~~annual fee for every rental dwelling unit in the State.~~

18 ~~(2) The annual fee for an affected property is \$15.~~

19 ~~(3) [(i) Subject to the provisions of subparagraphs (ii) and (iii) of~~
 20 ~~this paragraph, on or before December 31, 2000, the annual fee for a rental dwelling~~
 21 ~~unit built after 1949 that is not an affected property is \$5. After December 31, 2000,~~
 22 ~~there] THERE is no annual fee for a rental dwelling unit built after 1949 that is not an~~
 23 ~~affected property.~~

24 ~~[(ii) The owner of a rental dwelling unit built after 1949 that is~~
 25 ~~not an affected property may not be required to pay the fee provided under this~~
 26 ~~paragraph if the owner certifies to the Department that the rental dwelling unit is~~
 27 ~~lead free pursuant to § 6-804 of this subtitle.~~

28 ~~(iii) An owner of a rental dwelling unit who submits a report to~~
 29 ~~the Department that the rental dwelling unit is lead free pursuant to § 6-804 of this~~
 30 ~~subtitle shall include a \$10 processing fee with the report.]~~

31 ~~(b) The [fees] FEE imposed under this section [do] DOES not apply to any~~
 32 ~~rental dwelling unit.~~

1 ~~(1) Built after 1978; or~~

2 ~~(2) Owned and operated by a unit of federal, State, or local~~
3 ~~government, or any public, quasi-public, or municipal corporation.~~

4 ~~(e) The fee imposed under this section shall be paid [on or before December~~
5 ~~31, 1995, or the date of registration of the affected property under Part III of this~~
6 ~~subtitle and] on or before December 31 of each year [thereafter] or according to a~~
7 ~~schedule established by the Department by regulation.~~

8 ~~6-846.~~

9 ~~(a) A local health department that receives the results of a blood lead test~~
10 ~~under § 6-303 of this title indicating that a person at risk has an EBL [greater than or~~
11 ~~equal to 15 ug/dl before February 24, 2006, or] greater than or equal to 10 ug/dl [on or~~
12 ~~after February 24, 2006,] shall notify:~~

13 ~~(1) The person at risk, or in the case of a minor, the parent of the~~
14 ~~person at risk, of the results of the test; and~~

15 ~~(2) The owner of the affected property in which the person at risk~~
16 ~~resides or regularly spends at least 24 hours per week of the results of the test.~~

17 Article – Courts and Judicial Proceedings

18 SUBTITLE 2D. LEAD PAINT POISONING CLAIMS.

19 3-2D-01.

20 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
21 INDICATED.

22 (B) “CLAIM” MEANS A CIVIL ACTION, INCLUDING AN ORIGINAL CLAIM,
23 COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM, ORIGINALLY FILED IN
24 A CIRCUIT COURT OR UNITED STATES DISTRICT COURT AGAINST A PERSON
25 FOR INJURY CAUSED BY THE INGESTION OF LEAD-BASED PAINT OR
26 LEAD-CONTAMINATED DUST, AS DEFINED IN § 6-801 OF THE ENVIRONMENT
27 ARTICLE.

28 (C) (1) “QUALIFIED EXPERT” MEANS AN INDIVIDUAL WHO HAS
29 EDUCATION, TRAINING, AND EXPERIENCE IN DETERMINING THE POTENTIAL
30 SOURCES OF INGESTION OF LEAD AND THE HEALTH CONSEQUENCES OF
31 INGESTION OF LEAD.

32 (2) “QUALIFIED EXPERT” DOES NOT INCLUDE:

- 1 **(I) A PARTY TO THE CLAIM;**
- 2 **(II) AN EMPLOYEE OR PARTNER OF A PARTY;**
- 3 **(III) AN EMPLOYEE OR STOCKHOLDER OF A PROFESSIONAL**
4 **CORPORATION OF WHICH A PARTY IS A STOCKHOLDER; OR**
- 5 **(IV) A PERSON HAVING A FINANCIAL INTEREST IN THE**
6 **OUTCOME OF THE CLAIM.**

7 **3-2D-02.**

8 **(A) (1) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS**
9 **SECTION, THE COURT SHALL DISMISS A CLAIM, WITHOUT PREJUDICE, IF THE**
10 **CLAIMANT FAILS TO FILE A CERTIFICATE OF A QUALIFIED EXPERT WITH THE**
11 **COURT FOR EACH DEFENDANT.**

12 **(2) A CERTIFICATE OF A QUALIFIED EXPERT SHALL:**

13 **(I) CONTAIN A STATEMENT FROM A QUALIFIED EXPERT**
14 **ATTESTING THAT, WITH A REASONABLE DEGREE OF PROBABILITY, THE:**

15 **1. PROPERTY INVOLVED WAS A SOURCE OF THE**
16 **CLAIMANT'S INGESTION OF LEAD, INCLUDING THE BASIS FOR SUCH A FINDING;**
17 **AND**

18 **2. INGESTION OF LEAD FROM THE PROPERTY WAS A**
19 **SUBSTANTIAL CONTRIBUTING FACTOR TO THE INJURIES ALLEGED BY THE**
20 **CLAIMANT;**

21 **(II) SUBJECT TO THE PROVISIONS OF SUBSECTIONS (B) AND**
22 **(C) OF THIS SECTION, BE FILED WITHIN 90 DAYS AFTER THE CLAIM IS FILED;**
23 **AND**

24 **(III) BE SERVED ON ALL OTHER PARTIES TO THE CLAIM OR**
25 **THE PARTIES' ATTORNEYS OF RECORD IN ACCORDANCE WITH THE MARYLAND**
26 **RULES.**

27 **(3) FOR EACH CERTIFICATE OF A QUALIFIED EXPERT, THE**
28 **CLAIMANT SHALL PROVIDE THE DEFENDANT WITH A LIST OF:**

29 **(I) THE QUALIFICATIONS AND PUBLICATIONS OF THE**
30 **QUALIFIED EXPERT; AND**

1 **(II) THE CASES IN WHICH THE QUALIFIED EXPERT HAS**
2 **TESTIFIED, INCLUDING WHICH PARTY THE QUALIFIED EXPERT REPRESENTED.**

3 **(B) (1) ON WRITTEN REQUEST MADE BY THE CLAIMANT WITHIN 30**
4 **DAYS OF THE DATE THE CLAIM IS SERVED, THE DEFENDANT SHALL PRODUCE**
5 **DOCUMENTARY EVIDENCE THAT WOULD BE OTHERWISE DISCOVERABLE, IF THE**
6 **DOCUMENTARY EVIDENCE IS REASONABLY NECESSARY IN ORDER TO OBTAIN A**
7 **CERTIFICATE OF A QUALIFIED EXPERT.**

8 **(2) THE TIME FOR FILING A CERTIFICATE OF A QUALIFIED**
9 **EXPERT BEGINS ON THE DATE ON WHICH THE DEFENDANT'S PRODUCTION OF**
10 **THE DOCUMENTARY EVIDENCE UNDER PARAGRAPH (1) OF THIS SUBSECTION IS**
11 **COMPLETED.**

12 **(3) THE DEFENDANT'S FAILURE TO PRODUCE THE REQUESTED**
13 **DOCUMENTARY EVIDENCE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL**
14 **CONSTITUTE A WAIVER OF THE REQUIREMENT THAT THE CLAIMANT FILE A**
15 **CERTIFICATE OF A QUALIFIED EXPERT AS TO THAT DEFENDANT.**

16 **(C) (1) ON WRITTEN REQUEST BY THE CLAIMANT AND A FINDING OF**
17 **GOOD CAUSE BY THE COURT, THE COURT MAY WAIVE OR MODIFY THE**
18 **REQUIREMENT FOR THE FILING OF THE CERTIFICATE OF A QUALIFIED EXPERT.**

19 **(2) THE TIME FOR FILING THE CERTIFICATE OF A QUALIFIED**
20 **EXPERT SHALL BE SUSPENDED UNTIL THE COURT RULES ON THE REQUEST AND,**
21 **ABSENT AN ORDER TO THE CONTRARY, THE CERTIFICATE SHALL BE FILED**
22 **WITHIN 90 DAYS OF THE COURT'S RULING.**

23 **(D) DISCOVERY BY THE DEFENDANT AS TO THE BASIS OF THE**
24 **CERTIFICATE OF A QUALIFIED EXPERT SHALL BE AVAILABLE.**

25 **3-2D-03.**

26 **(A) A DEFENDANT WHO RECEIVES A CERTIFICATE OF A QUALIFIED**
27 **EXPERT FROM A CLAIMANT SHALL FILE A WRITTEN RESPONSE WITH THE**
28 **COURT.**

29 **(B) THE WRITTEN RESPONSE TO A CERTIFICATE OF A QUALIFIED**
30 **EXPERT SHALL:**

31 **(1) STATE THE REASONS THAT THE PROPERTY ALLEGED TO BE A**
32 **SOURCE OF THE CLAIMANT'S INGESTION OF LEAD WAS NOT A SUBSTANTIAL**
33 **CONTRIBUTING FACTOR IN THE ALLEGED INJURIES OF THE CLAIMANT;**

1 **(2) BE FILED WITHIN 120 DAYS OF RECEIPT OF THE CERTIFICATE**
2 **OF A QUALIFIED EXPERT; AND**

3 **(3) BE SERVED ON ALL OTHER PARTIES TO THE CLAIM OR THE**
4 **PARTIES' ATTORNEYS OF RECORD IN ACCORDANCE WITH THE MARYLAND**
5 **RULES.**

6 **(C) A DEFENDANT'S FAILURE TO FILE A WRITTEN RESPONSE TO A**
7 **CERTIFICATE OF A QUALIFIED EXPERT WITH THE COURT SHALL CONSTITUTE AN**
8 **ADMISSION THAT THERE IS NO DISPUTE AS TO ANY MATERIAL FACT IN THE**
9 **CLAIM.**

10 **3-2D-04.**

11 **(A) (1) THE COURT SHALL SCHEDULE A HEARING AFTER A**
12 **DEFENDANT FILES A WRITTEN RESPONSE TO A CERTIFICATE OF A QUALIFIED**
13 **EXPERT.**

14 **(2) A FORMER JUDGE MAY BE RECALLED FOR TEMPORARY**
15 **ASSIGNMENT UNDER § 1-302 OF THIS ARTICLE FOR PURPOSES RELATING TO**
16 **THE HEARING.**

17 **(B) DURING THE HEARING, THE CLAIMANT AND DEFENDANT SHALL**
18 **EACH HAVE AN OPPORTUNITY TO BE HEARD ON THE CERTIFICATE OF A**
19 **QUALIFIED EXPERT AND THE WRITTEN RESPONSE TO THE CERTIFICATE OF A**
20 **QUALIFIED EXPERT.**

21 **(C) FOLLOWING THE HEARING, THE COURT MAY ENTER JUDGMENT IN**
22 **FAVOR OF OR AGAINST THE CLAIMANT OR DEFENDANT IN ACCORDANCE WITH**
23 **RULE 2-501 OF THE MARYLAND RULES.**

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
25 construed to apply only prospectively and may not be applied or interpreted to have
26 any effect on or application to any civil action filed before the effective date of this Act.

27 **SECTION 3. AND BE IT FURTHER ENACTED,** That this Act shall take effect
28 ~~October~~ June 1, 2012.